

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

WILLIAM GEOFFERY DOBBINS, )  
                              )  
Plaintiff,                 )  
                              ) CIVIL ACTION NO.  
v.                         )  
                              ) 2:08cv895-MHT  
                              ) (WO)  
J.C. GILES and LEWIS     )  
HULETT,                    )  
                              )  
Defendants.               )

OPINION

Pursuant to 42 U.S.C. § 1983, plaintiff William Geoffery Dobbins, a former state inmate, filed this lawsuit challenging the constitutionality of actions taken against him by defendants J.C. Giles and Lewis Hulett. This lawsuit is now before the court on the recommendation of the United States Magistrate Judge that Giles and Hulett's motion for summary judgment should be granted in all respects, except as to Dobbins's excessive-force claim against Hulett in his individual capacity, which, according to the magistrate judge, should go to trial. Also before the court are Hulett's

objections to the recommendation. After an independent and de novo review of the record, the court concludes that Hulett's objections should be overruled and the magistrate judge's recommendation adopted.

The court adds this comment. Hulett argues, for the first time, that Dobbins cannot recover for emotional distress because such damages are barred by the provisions of 42 U.S.C. § 1997e(e). Hulett concedes, however, that he raised this argument for the first time in his objections. Thus, the argument was not included in Hulett's summary-judgment motion, nor was it presented to the magistrate judge or addressed by the magistrate judge in her recommendation. Because the only matter before the court is the magistrate judge's recommendation, Hulett's argument is not really before the court at this time. In addition, because Hulett did not present his argument earlier, Dobbins has not had an opportunity to address the argument. The court, therefore, declines to address the argument at this time.

If Hulett still wishes to pursue the argument, he should file a separate motion that presents it or he can raise the issue at trial.

An appropriate order will be entered.

DONE, this the 26th day of May, 2011.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE